



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 22, 1998

Mr. Gregory T. Simpson
Director, Employment and
Administrative Law Section
Texas General Land Office
Legal Services Division
1700 N. Congress Avenue
Austin, Texas 78701-1495

OR98-1721

Dear Mr. Simpson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117001.

The Texas General Land Office received a request for all the bids submitted in response for the purchase of "Paseo Del Este," any appraisal of the property, and any rules associated with Chapter 51 of the Natural Resources Code and the bidding process for the sale of property. You state that you have no documents responsive to the request for rules. You claim that the responsive bid and appraisal information is excepted from disclosure by sections 552.104 and 552.105 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.104 of the Government Code states:

Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 (1991) at 2, 463 (1987), 453 (1986) at 3. A general allegation or a remote possibility of an advantage being gained is not

enough to invoke the protection of section 552.104. Open Records Decision Nos. 541 (1990) at 4, 520 (1989) at 4. A general allegation of a remote possibility that some unknown "competitor" might gain some unspecified advantage by disclosure does not trigger section 552.104. Open Records Decision No. 463 (1987) at 2. As the exception was developed to protect a governmental body's interests, that body may waive section 552.104. *See* Open Records Decision No. 592 (1991) at 8.

In this instance, you explain that a bid award has been made for the sale of "Paseo del Este." You state that this gives the winning bidder the right to negotiate with the state for a contract of sale. You indicate that no contract of sale has been signed nor has the sale been closed. You argue that because no contract of sale has been negotiated or signed between the state and the successful bidder, bidding is still competitive and to release the requested information would harm the state's competitive position. You state that "[t]he possibility exists that contract negotiations may not result in a signed contract and the sale may not close. Rebidding for the sale of the land would then take place. We have previously held that so long as negotiations are in progress regarding the interpretation of bid provisions, and so long as any bidder remains at liberty to furnish additional information relating to the proposed contract, bidding should be deemed competitive and therefore, information relevant thereto may be withheld under section 552.104 prior to the award of the contract. Attorney General Opinion MW-591 (1982); Open Records Decision No. 170 (1977); *see* Open Records Decision No. 541 (1990). You may withhold the requested information at issue under section 552.104 until the contract is executed and the sale is closed.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 117001

Enclosures: Submitted documents

cc: Mr. Michael F. Ainsa
Ainsa Partners
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(w/o enclosures)